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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

and

PACIFIC GAS & ELECTRIC COMPANY,

Debtors.

PG&E CORPORATION,
PACIFIC GAS AND ELECTRIC COMPANY,

Plaintiffs,

v.

PUBLIC EMPLOYEES EMNT ASSOCIATION
OF NEW MEXICO, *et al.*

Defendants.

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

Adv. Pro. No. 19-03006 (DM)

**DEFENDANT ENRIQUE GUZMAN'S
ANSWER TO DEBTORS'
COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF AS TO ACTIONS AGAINST
NON-DEBTORS**

Complaint Filed: February 15, 2019
Judge: Hon. Dennis Montali
Courtroom 17, 16th Fl.

I. INTRODUCTION

1. Debtors Pacific Gas and Electric Company and PG&E Corporation (collectively, “PG&E”) ask this Court to enjoin Creditor Enrique Guzman’s (“Defendant” or “Mr. Guzman”) personal injury action currently pending against PG&E and Non-Debtor M Squared Construction, Inc. (“M Squared”), in San Francisco Superior Court, *Guzman v. Pacific Gas and Electric Company, et al.*, No. CGC-16-554005 (“*Guzman*”), because allowing it to proceed “would have a direct impact on the Debtors’ estates.” Debtor PG&E claims the attention of officers, directors, key employees and legal team will be diverted with litigating the *Guzman* matter, thereby draining resources from the Chapter 11 proceeding. Further, Debtor claims PG&E will be necessarily liable for the actions of the individual defendant in the *Guzman* matter. Debtors claims are inaccurate, unsupported and will not necessarily lead to irreparable harm. The Court should deny the request for injunction as to the *Guzman* case.

II. FACTUAL ALLEGATIONS

2. The *Guzman* action involves personal injuries suffered by Mr. Guzman when an unmarked electrical line exploded and caused him to be burned and suffer related orthopedic injuries.

3. The subject incident giving rise to the *Guzman* action occurred on March 28, 2016. The complaint was filed on September 1, 2016. The matter was originally set for trial on January 2, 2018. Four continuances were granted due to trial calendar conflicts and ongoing efforts to resolve the case. The case was set for trial on March 18, 2019.

4. The *Guzman* complaint alleges a single cause of action of negligence against M Squared, the contractor for the subject project, and PG&E. M Squared filed a cross complaint against Mr. Guzman’s employer for contractual indemnity. M Squared filed a cross complaint against PG&E for equitable indemnity.

5. Mr. Guzman denies that PG&E will suffer immediate adverse, and irreparable harm absent the injunction. Moreover, the unusual circumstances under which a bankruptcy stay may be extended to non-debtors are not present here.

6. There is no contractual obligation for PG&E to indemnify M Squared in this case, as there was no contract between M Squared and PG&E. As PG&E admits in its complaint, there is no legal relationship between PG&E and M Squared.

1 7. Additionally, the *Guzman* action is not one in which PG&E's conduct sits at the core of
2 the allegations. Mr. Guzman's complaint against M Squared stems from its own breach of duty
3 for proceeding to dig the trench and directing Mr. Guzman to excavate before receiving an
4 affirmative response from PG&E to proceed with the work, in direct violation of 8 CCR
5 Section 1541. Thus, the liability of M Squared rests on its own breach of duty under common
6 law and applicable regulations, particularly 8 CCR Section 1541. PG&E's claim that it is
7 PG&E's own conduct that sits at the core of the allegations in the underlying Complaint is
8 mistaken and any claim that a finding against M Squared would constitute a finding against
PG&E is wrong, factually and legally.

9 8. Furthermore, allowing the *Guzman* action to proceed against M Squared will not
10 adversely affect PG&E's key personnel. At the time of the bankruptcy filing, the parties to the
11 *Guzman* action had completed the following discovery with P&E: 18 depositions, 4 document
12 requests seeking 36 categories of records from PG&E (more than 970 pages were produced);
13 Judicial Council Form Interrogatories, 28 Special Interrogatories; 24 Requests for Admissions
and Supplemental Discovery for all categories.

14 9. An equal amount of discovery was completed with M Squared and Cross-defendant. A
15 Motion for Summary Judgment was filed by Cross-Defendant against M Squared, and was
16 denied. All parties participated in two mediations and disclosed experts for trial.

17 10. Of the 18 depositions, there were five depositions of employees of PG&E, none of
18 whom are officers, directors, or members of management. Four of the witnesses, Ron Chavez,
19 Raymond Datu, Alberto Degracia, and John Smoot, were line employees from the Locate and
20 Mark Team. Esther O'Keefe was a damage investigator for PG&E. Thus, the trial of this case
21 will not involve the participation of any officers, directors, or members of management.
22 Further, none of the defendants in the *Guzman* matter are officers, directors or members of
management.

23 11. At all times, PG&E was represented by Mark Hansen of LimNexis LLP. Mr. Hansen
24 and his firm are not counsel for PG&E in relation to the bankruptcy proceedings. Therefore,
25 any trial of this case will not involve the participation of PG&E's legal personnel related to the
26 reorganization matter.

1 12. While the harm to PG&E of allowing the *Guzman* action to proceed again M Squared
2 will be limited or nonexistent, the issuance of a preliminary injunction here will result in
3 immediate and irreparable harm to Mr. Guzman. As a result of his injuries, Mr. Guzman's
4 treating physicians have determined he is medically unable to continue working as a union
5 laborer. Mr. Guzman is 29 years old and as a result of this incident has suffered past and future
6 loss of wages and union benefits valued in excess of \$2,000,000 and non-economic damages
7 for pain and suffering. Due to a lack of transferable skills and education, Mr. Guzman's ability
8 to compete in the open labor market is extremely limited. He is married and every day that
9 passes causes severe financial hardship, uncertainty, and stress. Because he has lost his union
10 job, he no longer has health insurance for himself and his wife.

11 13. M Squared is a licensed contractor in the State of California and is insured against Mr.
12 Guzman's claims in this case. Mr. Guzman has made policy limit demand under California
13 Code of Civil Procedure Section 998. M Squared has not offered the policy.

14 14. Due to the delay and uncertainty in this matter, Mr. Guzman and his wife face the
15 prospect of economic ruin and the loss of housing.

16 15. In sum, while the *Guzman* case poses little danger of hardship to PG&E, a stay of the
17 action would result in immediate and irreparable harm to Mr. Guzman and PG&E's request for
18 a preliminary injunction should therefore be denied.

19 **III. CAUSES OF ACTION**

20 **COUNT ONE**

21 **(Section 105 Preliminary and Permanent Injunction)**

22 16. Mr. Guzman realleges and incorporates by reference the allegations above as if fully set
23 forth herein.

24 17. Mr. Guzman admits that Debtors seek a preliminary and permanent injunction to stay
25 the continued prosecution of the Related Actions against the Non-Debtor Defendants under
26 section 105(a) of the Bankruptcy Code until the Debtors emerge from Chapter 11, as set forth
27 in Paragraph 47 of the Complaint.

28 18. Mr. Guzman admits that this Court has jurisdiction and authority to enjoin the *Guzman*
case against M Squared under unusual circumstances. However, Mr. Guzman denies that the

1 *Guzman* case would constitute unusual circumstance or otherwise unduly interfere with the
2 Chapter 11 cases.

3 19. Mr. Guzman admits that a Bankruptcy Court may “issue any order, process, or
4 judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]
5 (11 U.S.C. § 105(a)),” as set forth in Paragraph 49 of the Complaint.

6 20. Mr. Guzman admits that the Bankruptcy Court may issue injunctive relief provided that
7 the elements for that relief have been met. Creditor denies that allowing the *Guzman* action to
8 proceed against M Equared would threaten the reorganization process or impair the Court’s
9 jurisdiction with respect to the case before it.

10 21. Mr. Guzman lacks sufficient evidence to admit or deny the allegations of Paragraph 51
11 and therefore denies them.

12 22. Mr. Guzman denies that PG&E will suffer immediate, adverse, and irreparable harm
13 absent the injunction, as set forth in Paragraph 52.

14 23. Mr. Guzman denies that the balance of hardships favors an injunction, as set forth in
15 Paragraph 53. Rather, Mr. Guzman alleges the balance of hardships favors denial of an
16 injunction, as discussed above.

17 24. Mr. Guzman denies that the requested injunctive relief will serve the public interest.

18 25. Mr. Guzman denies that the injunction is necessary or appropriate.

19 Defendant Enrique Guzman therefore asks this Court to deny PG&E’s request for a
20 preliminary and permanent injunction under section 105 of the Bankruptcy Code with regard to
21 the *Guzman* action against Non-Debtor Defendant M Squared.

22 Pursuant to Federal Rules of Bankruptcy Procedure 7012(b), Mr. Guzman consents to
23 the entry of final orders or judgments by the Court

24 THE ARNS LAW FIRM

25 DATED: March 21, 2019

26 /s/ Jonathan E. Davis

27 JONATHAN E. DAVIS

28 Attorney for Enrique Guzman